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No. 96-57

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

◆

ANDREW C. SCHIFFER,
Petitioner,

vs.

TARRYTOWN BOAT CLUB, INC.,
and its BOARD OF DIRECTORS individually,
JOHN MILLAR, KEVIN McDERMOTT,
ROBERT ROSSI, EDWARD THOMAS,
DONALD BRAINARD, THOMAS KENEALY,
ANTHONY ISMAILOFF, and JOHN PUFF,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO NEW YORK STATE COURT OF APPEALS

REPLY BRIEF OF PETITIONER

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15 pp

TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities	ii
Reply Brief of Petitioner ("RB")	1
I **ISN'T IT, *PER SE*, AN INNUENDO THAT PETITION IS TIME-BARRED?** ..	2
II **DIDN'T STATE COURTS ESCAPE (NOT TAKE) JUDICIAL NOTICE OF SETTLED LAW IN *TOSCANO* APPLICABLE TO CHOICE OF PLENARY ACTION AND THUS REVERSE (NOT REAFFIRM) BASIC JURISPRUDENCE AND NY CPLR 4511?**	3
III **WHEN COURTS RENDER DECISIONS RELYING ON PRACTICE OF LAW UNDER COLOR OF LAW VIOLATING 42 U.S.C. §1983 BASED ON MANIFEST INNUENDOES (IGNORING SETTLED LAW AND ADMITTED FACT), THEN DON'T SUCH DECISIONS RAISE A PLETHORA OF FEDERAL QUESTIONS ON, *INTER ALIA*, CONSTITUTIONAL DUE PROCESS AND EQUAL PROTECTION OF LAWS CLAUSES?** ..	6
Conclusion	8

TABLE OF AUTHORITIES

Page

SUPREME COURT RULES

Rule 13.2 2

US SUPREME COURT CASES

Douglas v. *Jeannette*, 319 U. S. 157, 181, 63 S.Ct. 877, 889 (**Jackson, J.**, 1943; **dissenting**, joined by **Frankfurter, J.**) 10

May v. *Henderson*, 268 U. S. 111, 45 S.Ct. 456 5

US COURT CASES

Central Republic Bank and Trust Co. v. *Caldwell*, C.C.A. Mo., 58 F.2d 721.. 5

Quick Erectors, Inc. v. *Seattle Bronze Corp.*, D.C. Mo., 1981, 524 F.Supp. 351 4

Sato v. *Plunkett*, 154 F.R.D. 189 (N.D.Ill., 1994) 9

MISCELLANEOUS CASES

Garcia v. *Silverman*, 70 Misc. 2d 537-38 (Civil Ct. N.Y.Co. 1972) 9

Mashunkashey v. *Mashunkashey*, 134 P.2d 976, 979 5

NY STATE STATUTES

NY CPLR § 213 .. .. RB, App. 1

OTHER AUTHORITIES

Bl. Dict., (6th ed.) 3, 4,5

Carrington, Meador, & Rosenberg, JUSTICE ON APPEAL 3, (1976) 10

Kronenwetter, Michael, THE SUPREME COURT OF THE UNITED STATES (American Government in Action), (1st ed., 1996).. 1-2

NYS Bar Association, PREPARING FOR AND TRYING THE CIVIL SUIT, (1987 Ed.) 4

Rothwax, Judge Harold J., GUILTY, *The Collapse of Criminal Justice*, (1st ed., 1996) 2-3

Shapiro, Fred R., THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS, (1st ed., 1993) 3

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Brief in Opposition ("BO") raises **new points** that continue to ask the same unsettling question: Despite exposé, isn't practice of **Judicial Inveiglement** (not law) still in progress even NOW before "this honorable court"[1] (BO at p. i)?

[1] The Supreme Court .. is the most powerful court in the world. (p.26). The Justices of the Supreme Court have enormous responsibility, including the duty to uphold

NEW POINT NO. I

ISN'T IT, *PER SE*, AN INNUENDO THAT PETITION IS TIME-BARRED?

> The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time. .. ..
> S Ct *Rule* 13.2.

Respondents' Counsels repeated their routine innuendo calculated to win when they demanded that this Court count the 90-day period from January 16, 1996 (not March 28, 1996) as the jurisdictional date to determine timeliness. *Akin* to the inferior courts, should this Court also find the Petition itself time-barred, then its decision would erase the very need to review Petition on merits. (BO at p. 1).

Per se, isn't inveigling this Court into relying on practice of law under color of law (i.e., practice of **Houdini-ism**) and thus **denying** Petition as time-barred an **entrapment to be blamed**[2] for succumbing to **innuendoes**[3]?

> the United States Constitution. (p.8). The inscription chiseled above the front entrance of the Supreme Court building reads "equal justice under law." (p.4).
> Michael Kronenwetter, **The Supreme Court of the United States** (American Government in Action), (1st ed., 1996).

[2] .. If [judges] don't run their courtrooms, then the lawyers will--with all the chaos that implies. .. When [that attorney] later appeared in my own courtroom, I warned him, ".., you're not even going to get past the *first* time." [Lawyer] shrugged and said, "**Don't blame me**. [The] **Judge .. let me do it**."(p. 227). .. clever .. attorneys, coupled with passive judges, can fashion "evidence" out of innuendo .. the American courtroom

NEW POINT NO. II

DIDN'T STATE COURTS ESCAPE (NOT TAKE) JUDICIAL NOTICE OF SETTLED LAW IN *TOSCANO* APPLICABLE TO CHOICE OF PLENARY ACTION AND THUS REVERSE (NOT REAFFIRM) BASIC JURISPRUDENCE AND NY CPLR 4511?

Respondents took no issue with *Toscano* (Pet., pp. 20-29 at p. 23). Instead, their general expressions[4] are, *per se*, manifest ignorance of both law and fact[5] (Pet. at p. iii):

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is dangerously out of order .. And society is left with the bitter taste of perverse justice. .. (p. 232) .. ***Judge Harold J. Rothwax***, GUILTY *The Collapse of Criminal Justice* (1st ed., 1996). [*Emphasis added*].

[3] The old lawyer said, "If the evidence is against you, talk about the law. If the law is against you, talk about the evidence."

The young lawyer asked, "But what do you do when both the law and evidence are against you?"

"In that case," replied the old lawyer, "give somebody hell. That'll distract the judge and the jury from the weakness of your case."* *A Treasury of American Anecdotes* 10 (B.A. Botkin ed. 1957).

* f/n The same joke, with the punchline "pound on the table and yell like hell," appears in Carl Sandburg's poem, *The People, Yes*, 1936, in *Complete Poems of Carl Sandburg*, 439, 551 (1970).

Fred R. Shapiro, **The Oxford Dictionary of American Legal Quotations**, pp. 11-12 (1st ed., 1993). [*Emphasis added*].

[4] *Fraus latet in generalibus*. Fraud lies hid in general expressions. *Fraus meretur fraus*. Fraud merits fraud. *Fraus* est *celare fraudem*. It is a fraud to conceal a

> Petitioner's "questions presented" make no sense and, certainly, present no question of federal law. (OB at p.i). [*Emphasis added*].

Respondents' upfront omnipotent objection and instant conclusion (in concert) **cornered petitioner's counsel into not repeating the same mistake as in inferior courts**.[6] Petitioner's counsel seeks forgiveness and begs this Court to be reminded that a **plenary action** for seeking damages is

---

> fraud. *Fraus* et *dolus nemini patrocinari debent*. Fraud and deceipt should defend or excuse no man. *Fraus et jus nunquam cohabitant*. Fraud and justice never dwell together.
>
> *Bl. Dict.* (6th ed.), p. 663.

[5] > If [defendant] takes issue with statements in [petitioner's] petition, issue must be heard and determined by [Supreme] Court, but if [defendant] does not take issue with what is stated in petition, [defendant] must be taken as assenting to its truth and [petitioner] need not produce any proof to sustain it [ignorance of it all by adversary is proof, *per se*]. [*Emphasis added*].
>
> *Quick Erectors, Inc.* v. *Seattle Bronze Corp., D.C.Mo.*, 1981, 524 F.Supp. 351.

[6] > One is reminded of the anecdote of the trial lawyer arguing a contract case on appeal. He started the appellate argument by informing the court that a contract was an agreement between parties for a lawful purpose or objective for which consideration has been paid. The appellate presiding justice interrupted with a question, "Counsel, can't you assume the Court knows what a contract is?" The lawyer replied, "Heck no, that's the mistake I made below." [*Emphasis added*].
>
> NYS Bar Association, PREPARING FOR AND TRYING THE CIVIL SUIT (1987 ed.), p. 352.

not same as an article 78 action for seeking injunctive relief and no damages. Our apex Constitutional Court may protect itself against **innuendoes**: at least now.

A **plenary action**[7] under eight causes of action to recover damages for (amongst others) breach of contract, etc. was timely commenced on April 28, 1992: well within the six-year limitation periods commencing on November 3 and 11, 1991 (Pet., App. E at 8a) under NY CPLR § 213 (RB, App. 1). See *Toscano*, *supra*. (Pet. at pp. 22-24).

Quite to the contrary, not one of the plethora of cases State Courts relied on is on plaintiff's constitutional right of choice between a plenary action and an article 78 action. Reliance on irrelevant precedents is judicial evidence that State courts repeatedly escaped judicial notice of, and, thus, erased the relevant settled law in *Toscano* (*supra*).

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[7] [**Plenary action** means a] complete and formal hearing or trial on the merits as distinguished from a summary hearing which is commonly less strict and more informal.

May v. *Henderson*, 268 U.S. 111, 45 S.Ct. 456. *See* also, *Central Republic Ban and Trust Co.* v. *Caldwell*, C.C.A. Mo., 58 F.2d 721. [*Emphasis added*].

[**Plenary jurisdiction** means f]ull and complete jurisdiction or power of a court over the subject matter as well as the parties to a controversy. [**Plenary powers** mean a]uthority and power as broad as is required in a given case.

Bl. Dict., (6th ed.), p. 1154. [*Emphasis added*].

[**Plenary** means f]ull, entire, complete, absolute, perfect, unqualified.

Mashunkashey v. *Mashunkashey*, 134 P.2d 976, 979.

Despite *Toscano* being the only relevant law, judicial notice of the relevant law was never ever taken: as if it ceased to exist. Isn't *per se* inveigling this Supreme Court also into relying on practice of law under color of law (i.e., practice of **Houdini-ism**) and thus **denying** Petition as "certainly, present[ing] no question of federal law" (BO at p. i) yet another **entrapment to be blamed** for succumbing to **innuendoes** but not relying on relevant law and fact?

> Further, even if the Petition is timely filed, Petitioner has not raised a federal question. Difficult as it is to decipher [WHY?], Petitioner's argument seems to be [NOT SURE?] that because he lost on the procedural and substantive law of New York State, thus court should review and declare the relevant law is unlawful [WHAT?], thus enabling him to succeed in this matter.
>
> .. We are **no longer children** and in life there is no "do-over" when a panel of judges **properly** [SURE, NOT SEEMS TO BE?] applies the [RELEVANT?] law and rules against us."

(BO at p. 1). [*Emphasis added*].

With due respect for "brother attorney" (BO at p. 10) but NONE for COLOR OF LAW, petitioner's lawyer **represents LAW** (as an ethical officer of court) **first**: ONLY THEN it represents **client** (as an unethical lawyer). **No one must win without merit based on law and fact**.

NEW POINT NO. III

WHEN COURTS RENDER DECISIONS RELYING ON PRACTICE OF LAW UNDER COLOR OF LAW VIOLATING 42 U.S.C. §1983 BASED ON MANIFEST INNUENDOES (IGNORING SETTLED LAW AND ADMITTED FACT), THEN DON'T SUCH DECISIONS RAISE A PLETHORA OF FEDERAL QUESTIONS

ON, *INTER ALIA*, CONSTITUTIONAL DUE PROCESS AND EQUAL PROTECTION OF LAWS CLAUSES?

Isn't is manifest that the plain words "[e]very person" in 42 U.S.C. §1983 includes both natural persons (like WE THE PEOPLE including lawyers) and also unnatural persons (like inanimates WE THE PEOPLE create for serving WE THE PEOPLE: corporations, States, Courts, and all)--NOT JUST "state actors" (BO at p.17)?

Respondents thus conclude that:

> The seven judges of the New York State Court of Appeals, the four judges empaneled at the Appellate Division, and the trial court judge [twelve judges in] all misunderstood the law [on **plenary action** that was **erased**]... if we are to believe Petitioner['s counsel].

(Brief in Opposition at 11). [*Emphasis added*].

Petitioner chose and thus commenced its timely plenary action (the "Apple") on April 28, 1992: within the relevant six years limitations period. *Akin* to licensed doctors who take out of its mother's womb the baby when ready to be born, licensed lawyers took out of the lawful plenary action an article 78 action that never ever was in the womb of the plenary action: never will be in the future. (the "Orange').

When litigants had their day in court(s) seeking a decision on the Apple but, quite to the contrary, the judges rendered and reaffirmed decisions after decisions on an Orange instead, then isn't each one of those decisions rendered under color of law? Wasn't each court inveigled into rendering a decision that it should not have rendered based on settled law and admitted fact: as to the Apple?

Per se, then, aren't the two unsettling questions presented, indeed, questions on federal law that sure beg intervention of our apex Supreme Court to invoke its **Supremacy Clause**? Could it now take charge of our State judiciary unable to protect itself against unconstitutional practice of **Houdini-ism** in the constitutional garb of practice of law that, *per se*, is under color of law?

If rendering decisions on Subject Matter for adjudication "makes no sense" and "present no question of federal law" (BO at p. i), then the judicial consequences of this Court's historical denial of Petition are obvious: a judicial reversal of the biblical--**as you sow, so you reap**.

KING SOLOMON CREATED HISTORY WHEN AS JUDGE HE EXPOSED THE MOTHER-IN-FICTION AND FOUND THE MOTHER-IN-FACT. THE LEGENDARY JUDGE FIRST PROTECTED ITSELF AGAINST EMOTIONS CAUSED BY ITS INITIAL DECISION TO CUT THE DISPUTED BABY IN TWO EQUAL HALVES FOR EQUAL JUSTICE UNDER LAW. FACT PREVAILED. FICTION FAILED. JUSTICE WAS RENDERED. INJUSTICE WAS REVERSED.

OUR SUPREME COURT ALSO MAY NOW:

EITHER
REPEAT HISTORY
RELYING ON PRACTICE OF LAW
OR
REVERSE HISTORY
RELYING ON PRACTICE OF LAW
UNDER COLOR OF LAW.

CONCLUSION

Deception defies discovery.

Discovery exposes deception.

Petitioner's counsel begs[8] that Court now perform:

(a) its *institutional function* and reaffirm--that no court of law in the land will let a lawyer practice law under color of law (practice of **Houdini-ism**) that **reaffirms the judicial satire as published** (Pet. at p. i), *per se*, as our **Constitutional due process** (Pet. at p. ii); and,

(b) its *review for correctness function* (if now possible) and reaffirm (not reverse)--the constitutional principle used (not abused) in *Sato* and *Garcia* (Pet. at p.ii).[9]

---

[8] Here now we have an attorney [**NOT** its own WINNING ADVOCACY?] accusing a brother [**NOT** an adversary?] attorney of things which amount to libel [**NOT TRUTH?**] all in the course of assuaging his client's ego [**NOT** DECISION ON APPLE?]. Perhaps it is because Petitioner's counsel was trained in India; which, from reading Appendix J of Petitioner's brief, seems to be a country with a corrupt legal system [**NOT** as Indian Supreme Court REVERSED?]. Whatever the reason [**NOT** sole and exclusive **Judicial Inveiglement** of our entire State judiciary by its own practice of law under color of law?], there is no excuse for *ad hominem* attacks [**NOT mirror image** of its own winning advocacy?]. A review of the Petition before this Court on its merits [**NOT** as respondents painted into *ad hominem* attacks and dwarfed AWESOME TRUTHS that Picasso painted as TRUTHS?] leads to only one conclusion, **it must be denied** [**NOT** granted and thus **Judicial Inveiglement** exposed?].
(Br. Opp. at 10). [*Emphasis added*].

Akin to our brother Supreme Court of India, time may be now. Our brother Supreme Court of United States may also protect its Eyes and issue a writ for settling answers that will **reverse** the **judicial trends** from **petrifying** into **administering** law and from rendering decisions **off** the Subject Matter to **on** the Subject Matter. Court's denial of the Petition may very well be the one story too many that **Justice Jackson** warned the then 1943 Constitutional Court against: **in his dissent**. It will constitutionalize the ignoble privilege of lawyers practicing law under color of law that erases both law and fact as they exist in reality--such that appearance thereof by pure practice of **Houdini-ism** removes the Eyes of their creators: the Courts.

> This Court is forever adding new stories to the temples of constitutional law, and the temples have a way of collapsing when one story too many is added.

Douglas v. *Jeannette*, 319 U.S. 157, 181, 63 S.Ct. 877, 889, (**Jackson, J.**, 1943: **dissenting**, joined by **Frankfurter, J.**).

Dated: August 20, 1996

Respectfully submitted,

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[9] On the one hand, appellate justice is preoccupied with the impact of decisions on particular litigants, but on the other it is concerned with the general principles which govern the affairs of persons other than those who are party to the cases decided. [*Emphasis added*].

Carrington, Meador, & Rosenberg, **Justice on Appeal** 3 (1976).

New York State Statutory Provisions[1]

NY CPLR § 213 (in pertinent parts) provides as follows:

> **§ 213. Actions to be commenced within six years: where not otherwise provided for; on contract; on .. ..**
>
> The following actions must be commenced within six years:
>
> 1. an action for which no limitation is specifically prescribed by law;
>
> 2. an action upon a contractual obligation or liability, express or implied, except as .. ..;
>
> .. ..

[1] Petitioner's counsel seeks forgiveness for its inadvertent mistake in not including this obvious provision in its Petition: the first ever petitioner's counsel drafted.